

IN THE PARSİ CHİEF MATRİMONİAL COURT AT BOMBAY

O. O. C. J.

PARSİ SUIȦ NO.35 OF 2004

Mrs.Delfi Shahzad Namdarian. ...Plaintiff.

Vs.

Mr.Shahzad Godrej Namdarian. ...Defendant.

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Ms.Zenobia S.Irani for the Plaintiff.

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CORAM : DR.D.Y.CHANDRACHUD, J.

(Aided by a forewoman,
two Gentlemen and
two Ladies)

March 2, 2005.

ORAL JUDGMENT :

1. This suit has been instituted under the provisions of Section 32(dd) of the Parsi Marriage and Divorce Act, 1936, for divorce on the ground that the Defendant has, since the solemnization of the marriage, treated the Plaintiff with cruelty or

has behaved in such a way as to render it in the judgment of the Court, improper to compel the Plaintiff to live with the Defendant. The Plaintiff and the Defendant were married at Mumbai on 14th December 2002, according to Parsi Zoroastrian rites and customs. Both the parties profess and belong to the Zoroastrian faith. Parties are domiciled in Mumbai and no issue has been born from the marriage. For a brief period, parties cohabited in Pune, after which they shifted back to Mumbai and resided with the parents of the Defendant at the address shown in the cause title to the plaint. The Plaintiff has averred that the Defendant is an alcoholic and that he has been abusive and has physically assaulted the Plaintiff under the influence of alcohol. The Plaintiff has averred that the Defendant is a drug addict. The Defendant, it is alleged, used to assault the Plaintiff due to minor irritants in the presence of members of the family and friends of the parties. On one occasion, when the parties were residing at Pune, it is stated, that the Defendant tried to choke the Plaintiff and threatened to throw her from the balcony of the 9th Floor where they were residing. The Defendant, it is alleged, did not

allow the Plaintiff to visit her parents. In the year 2003, when the sister of the Plaintiff visited her at Pune, the Defendant is alleged to have assaulted the Plaintiff and her sister without any reason. The Plaintiff has averred that the Defendant has been rude and dominating; that there were serious matrimonial disputes between them. The Plaintiff states that the Defendant has been continuously under the influence of alcohol and drugs as a result of which his behaviour was not proper, even when friends of the Plaintiffs or her relatives visited the matrimonial home. Eventually, it is alleged that the Plaintiff was compelled to leave the matrimonial home in February 2004. Even thereafter, according to the Plaintiff, the Defendant made telephone calls to the Plaintiff and threatened to kill her unless she returned to the matrimonial home. The Plaintiff has lodged a complaint at the Tardeo Police Station on 19th March 2004 and a complaint on 5th October 2004 at the Social Service Branch of the Mumbai Police.

2. The Defendant has been served. An affidavit of service has been filed in these proceedings. The Defendant has not entered appearance or filed his

written statement.

3. The following issues have been framed in the suit :

1. Whether the Plaintiff proves that she was treated with cruelty by the Defendant?
2. Whether there is any collusion, connivance or condonation between the Plaintiff and the Defendant ?
3. Whether there is any force, fraud, coercion or undue influence on the Plaintiff for filing suit?
4. Whether there is any unreasonable or improper delay on the part of the Plaintiff in the institution of the suit?
5. What order?

4. In support of the allegations contained in the plaint, the Plaintiff has filed an affidavit in lieu of the Examination-in-Chief. The affidavit

contains a recital of the case of the Plaintiff against the Defendant and details of the incidents during the course of which the Defendant has, under the influence of alcohol and drugs, assaulted the Plaintiff.

5. In accordance with the provisions of Section 46 of the Parsi Marriage and Divorce Act, 1936, the advice of the delegates has been sought on matters of fact which arise in these proceedings, more particularly with reference to the issues which have been framed. The forewoman of the delegates has informed the Court that the delegates have unanimously determined that the Defendant has treated the Plaintiff with cruelty; that there has not been any collusion, connivance or condonation between the Plaintiff and the Defendant; that there is no force, fraud, coercion or undue influence on the part of the Plaintiff in filing the suit and that there is no delay on the part of the Plaintiff in instituting these proceedings.

6. The conclusion which has been arrived at by the delegates on matters of fact is in my view, correct

and proper and is manifestly in accord with the evidence which has emerged before the Court. The Plaintiff has stated that after she married the Defendant in Mumbai on 14th December 2002, according to Parsi Zoroastrian rites and customs, they resided together with the parents of the Defendant at Tardeo, Mumbai. The Defendant was given to consumption of excessive alcohol and to drug addiction. The Plaintiff has deposed that the Defendant assaulted her and that he was abusive. The Plaintiff has deposed that the Defendant had, when the parties were residing at Pune, threatened the Plaintiff to throw her from the balcony of the 9th floor where they were residing and he had thrown household articles at her. The Plaintiff further deposed that the Defendant used to beat her in front of her parents. On one occasion in 2003, when the sister of the Plaintiff visited Pune, the Defendant assaulted her and her sister without any reason. As a result of the conduct of the Defendant, the Plaintiff was compelled to leave the matrimonial home in February 2004. She has lodged Police complaints on 19th March 2004 and 5th October 2004. The Defendant, the Plaintiff has deposed, has called her up at her residence and

office and administered threats to her.

7. In these circumstances, I am of the view that a decree for dissolution of the marriage on the ground of cruelty has to be passed and sufficient evidence has been produced before the Court in support of the case as stated. On the evidence before the Court, it emerges that there is no collusion or connivance in the institution of these proceedings and the Plaintiff has not condoned the behaviour of the Defendant. There is no force, fraud, coercion or undue influence on the part of the Plaintiff in instituting the suit. There is no unreasonable or improper delay on the part of the Plaintiff in the institution of the suit. In these circumstances, Issue No.1 is answered in the affirmative. Issue Nos.2, 3 and 4 are answered in the negative.

8. In the circumstances, the suit is decreed in terms of prayer clauses (a) and (b) with no order as to costs.

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